

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOHN EVERETT,)
)
Plaintiff, pro se,)
)
v.)
)
LYNN YARBORO,)
KISHA TAYLOR,)
)
Defendants.)

**MEMORANDUM OPINION
AND RECOMMENDATION**

1:10CV831

This matter is before the court on a motion to remand by Defendants Lynn Yarboro and Kisha Taylor (docket no. 15). Plaintiff has responded in opposition to the motion. In this posture, the matter is ripe for disposition. Since there has been no consent, the court must deal with the motion to remand by way of a recommended disposition. For the reasons discussed herein, it will be recommended that the motion to remand be granted.

Background

On April 13, 2010, Plaintiff John Everett filed a pro se lawsuit in Durham County Superior Court against Defendants Lynn Yarboro and Kisha Taylor. (Case No. 10 CVS 03106, Durham County Superior Court.) On November 8, 2010, Plaintiff filed several documents with this court, including a purported "Petition for Removal," with attachments consisting of various documents from the state court action. Thus, Plaintiff has attempted to remove his case from state court to this court. When a

party moves for remand, the burden is on the removing party to show that the requirements for removal have been met. *Strawn v. AT&T Mobility LLC*, 530 F.3d 293, 296-97 (4th Cir. 2008). Plaintiff has wholly failed to satisfy his burden to show that removal was proper, as the federal statute regarding removal simply does not allow for a plaintiff to remove his own case from state court to federal court. See 28 U.S.C. § 1441; *Am. Int'l Underwriters, (Philippines), Inc. v. Continental Ins. Co.*, 843 F.2d 1253, 1260 (9th Cir. 1988) (stating that the right to remove from state court to federal court "is clearly limited to defendants"). Thus, the motion to remand should be granted.

Conclusion

For the reasons stated above, it is **RECOMMENDED** that the court **GRANT** Defendants' motion to remand (docket no. 15).



WALLACE W. DIXON
United States Magistrate Judge

Durham, NC
January 24, 2011